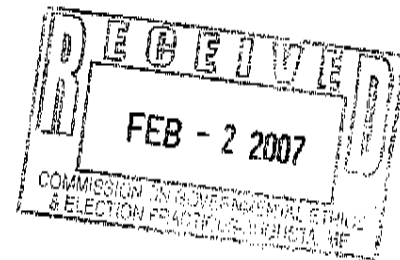


Agenda

Item #14



February 1, 2007

Mr. Jonathan Wayne
Executive Director
Commission on Governmental Ethics
135 State House Station
Augusta, ME 04333-0135

Dear Mr. Wayne:

This letter is sent in response to your January 16, 2007 letter regarding AARP Maine's 2006 activities regarding the Taxpayer Bill of Rights ballot question ("TABOR"). During the election cycle of November 7, 2006, AARP placed ads that opposed the TABOR ballot question in television, radio, and print media.

AARP Maine funded these advertisements in the ordinary course of operations as a social welfare organization. In funding its TABOR ballot question opposition, AARP Maine received no cash or in-kind contributions, nor did it solicit its members or the public for contributions.

AARP Maine disclosed fully all expenditures and the lack of contributions in the October 31, 2006 § 1056-B report. Moreover, AARP Maine consulted Ms. Martha Currier-Demeritt of the Commission on Government Ethics (the "Commission") staff prior to submitting this report to ensure its full and complete compliance with the laws of Maine. Ms. Currier-Demeritt advised that disclosing the direct costs of our television, radio and print ads plus the portion of the production costs associated with those ads would constitute full compliance. Following this expert advice, AARP Maine prepared the October 31, 2006 § 1056-B report (attached). The December 27, 2006 memorandum regarding the Commission staff's advice on § 1056-B reporting reiterates Ms. Currier-Demeritt's advice, and confirms that AARP Maine disclosed all TABOR-related activities fully and in the proper manner in its October 31, 2006 § 1056-B report.

In response to Mr. Lenardson's inquiry, AARP Maine, a state office of AARP, respectfully submits that neither it nor the national AARP organization is a political action committee under Maine or federal law. AARP Maine's purpose is not to influence the outcome of any election. AARP Maine expended only AARP institutional funds and did not act as a conduit for others. AARP Maine's major purpose emphatically was and is not to advocate the election or defeat of any candidate or ballot initiative.

Instead, AARP is a nonprofit, nonpartisan membership organization dedicated to helping people ages 50 and over enjoy personal independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. In 1964, AARP received a Determination Letter from the Internal Revenue Service, concluding that AARP was organized and operated exclusively for the promotion of social welfare, pursuant to Section 501(c)(4) of the Internal Revenue Code. That determination, and AARP's status, is the same today. AARP's official tax-exempt status as a nonpartisan social welfare organization extends to AARP's state offices, as well. Consequently, AARP Maine does not satisfy or fit within the definition of a political action committee under ME. REV. STAT. tit. 21-A §1052(5) (2006).

We hope that this letter will satisfy the Commission's concerns about Mr. Lenardson's inquiry and conclude this matter. Please feel free to contact me at any time if you should require any additional information from AARP Maine.

Sincerely,

A handwritten signature in black ink, appearing to read "Jud Dolphin", written in a cursive style.

Jud Dolphin
Maine State Director
AARP

cc. Jami Wyatt, AARP Office of General Counsel

Dear Jonathan:

I would like to formally request that the staff review whether or not Democracy Maine incorrectly filed as a 1056-B when their activities are more accurately reflected as a Political Action Committee. In addition to the Democracy Maine inquiry, I am concerned that the AARP, while certainly a large organization with many responsibilities beyond anti-Tabor activities, fails to meet the 1056-B test. I am not familiar with an organization spending 300,000 dollars in a single campaign, and deciding it is not a PAC.

It makes sense to me that a quick review of all the 1056-B filers is in order. I am specifically requesting the AARP review, although there may be others that should also be included.

I am attaching several documents which I believe represent a "major" portion of the activities of the Democracy Maine during the referendum campaign.

Including:

1. Email solicitations (I have included 3) asking for money for the defeat of TABOR
2. A press release announcing that "Democracy Maine Begins Campaign to Expose TABOR as a Fraud"
3. A copy of one of the Newspaper Ads (Full page) that ran in papers throughout Maine urging a NO vote on Question 1
4. A copy of one of the mailings that was sent from Democracy Maine urging the defeat of TABOR
5. A screen shot of their campaign website www.stophurricanetabor.com, which also links to their other website, www.democracymaine.com and includes a link for a radio Ad.
6. A copy of their 1056-B report which shows just over \$1000 dollars in contributions and more than \$42,000 in expenditures July 24th through October 23, a 3 month period. I do not have the latest copy.

Finally, I would like to state that I am adamantly opposed to the requirement created in the context of the 1056-B reports that an organization file where and when they have spoken on an issue. This new requirement that groups register their speaking activities with the government is dangerous.

However, I believe the Maine Heritage Policy Center, which is now required to register with the government, is being unfairly singled out. The following organizations did not file a 1056-B report yet expended resources and spoke in opposition to TABOR:

1. The City of Portland
2. The Kathadin Institute
3. The University of Maine System
4. The Catholic Church
5. The Maine State Chamber

This is by no means a complete list, but before I file an additional complaint, could you please provide me with guidance on the standards being used that will trigger the reporting requirement? Information on how many speeches have to be given or the number of meetings held, the number of mentions in the paper, radio and TV. If there are specific content issues that one would need to consider, that be helpful to know as well. My goal here is to understand exactly when the 1056-B report would be triggered.

I look forward to working with you in this issue.

Roy Lenardson

Strategic Advocacy, LLC
605 US Route One, Suite B
Scarborough, Maine 04074
207.329.0992 (c)
207.510.7631 (o)
207.221.1041(f)
roy@strategicadvocacy.com



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

January 16, 2007

Jud Dolphin
American Association of Retired Persons - Maine
1685 Congress Street
Portland, ME 04102

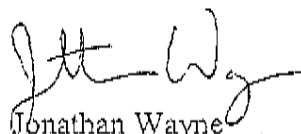
Dear Mr. Dolphin:

The Ethics Commission has received the attached request from Roy Lenardson regarding the American Association of Retired Persons (AARP) in Maine. Mr. Lenardson inquires whether AARP Maine's 2006 activities regarding the Taxpayer Bill of Rights (TABOR) citizen initiative required it to register as a political action committee and to file regular campaign finance reports. I have attached his complaint, the definition of political action committee under 21-A M.R.S.A. §1052(5), the separate reporting requirement (§1056-B) under which you filed a report, and an advisory memo from the Commission staff regarding §1056-B reporting.

I am scheduling this matter for the Commission's meeting in March, because the agenda for the February meeting is already quite long. The date for the March meeting has not been finalized. **Please submit a written response to the request no later than Wednesday, February 7th.** In your response, please describe AARP Maine's activities relating to the Taxpayer Bill of Rights (TABOR) initiative, how they were funded, and whether they have been fully disclosed in your October 31, 2006 §1056-B report or elsewhere.

With regarding to the completeness of your §1056-B report, the Commission staff has developed advice for organizations filing §1056-B reports to encourage consistent reporting. Please take time to consider the attached guidance memo and whether all of AARP's 2006 financial activity regarding TABOR was reported.

Sincerely,


Jonathan Wayne
Executive Director

cc: Roy Lenardson
Nancy B. Kelliher (w/o attachments)

Title 21-A, §1052, Definitions

4. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of influencing the nomination or election of any person to political office; or for the initiation, support or defeat of a campaign, referendum or initiative, including the collection of signatures for a direct initiative, in this State;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and

[2005, c. 575, §4 (amd).]

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee or candidate;
- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$100 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and
- (6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office.

[2005, c. 301, §22 (amd).]

[2005, c. 575, §4 (amd).]

5. Political action committee. The term "political action committee:"

A. Includes:

- (1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question;
- (2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;
- (3) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and
- (4) Any organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than \$1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition, including the collection of signatures for a direct initiative, in this State; and

[2005, c. 575, §5 (amd).]

B. Does not include:

- (1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;
- (2) A candidate's authorized political committee under section 1013-A, subsection 1, paragraph B; or

Title 21-A, §1056-B, Reports of contributions and expenditures by persons

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PLEASE NOTE: The Revisor's Office CANNOT perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

§1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. [1999, c. 729, §8 (new).]

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059. [1999, c. 729, §8 (new).]

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question. [1999, c. 729, §8 (new).]

3. Forms. A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [1999, c. 729, §8 (new).]

PL 1999, Ch. 729, §8 (NEW).



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Interested Persons
From: Jonathan Wayne, Executive Director
Date: December 27, 2006
Re: Advice from Commission Staff on §1056-B Reporting

In response to a request, the Ethics Commission staff is offering the advice below regarding which financial activities are covered by 21-A M.R.S.A. §1056-B. This advice is offered provisionally until more permanent guidance can be determined through formal rulemaking or, possibly, a statutory amendment to §1056-B. If you believe you may need to file an amended §1056-B report as a result of this advice, please feel free to telephone Martha Demeritt at 287-4179. Please keep in mind that the advice has been drafted by the Commission staff, and has not been specifically approved by the Commission members.

Contributions Covered by §1056-B

Section 1056-B covers "contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" We propose that this would include the following:

- funds which the contributor specified were given in connection with a ballot question (*i.e.*, for the purpose of promoting or opposing a ballot question);
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be for an organization's general activities would not be covered by Section 1056-B.

Expenditures Covered by §1056-B

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" We propose that this would include the following:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees in connection with appearances at public or press events;
- staff time preparing presentations, testimony or press releases to promote or oppose the ballot question;
- research or technical analysis including the writing of reports, where the sponsoring organization knows or reasonably should know that the research will be used to promote or oppose the ballot question; and
- expenditures to distribute research or technical analysis of a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

Expenditures Not Covered by §1056-B

We propose that expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by §1056-B:

- Hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced.

In 2006, for example, this would include the many community organizations (rotary clubs, public libraries, church groups) that hosted TABOR-related debates.

- News stories, commentary, or editorials concerning a ballot question distributed through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question.
- Research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question.

This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (e.g., academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by §1056-B.

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ETHICS COMMISSION

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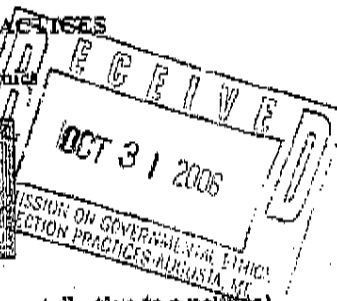
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AARP MAINE STATE OFFICE

001

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333-0135
Tel: (207)287-6221 FAX: (207)287-6775 Website: www.maine.gov/ethics



Any person who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

NAME OF PERSON AARP
(Person means an individual, committee, firm, partnership, corporation, association, group or organization.)

Mailing address 1685 Congress
City, zip code Portland ME 04102

Telephone number 207-791-3501 Fax _____ E-mail jdolphin@aarpmo.org

NAME OF TREASURER Jul Dolphin, State Director
(or other officer or employee authorized to file this report, if person reporting is other than an individual)

Mailing address Same

City, zip code _____

Telephone number _____ Fax _____ E-mail _____

The purpose for receiving contributions and making expenditures is (check one):
to SUPPORT _____ or OPPOSE ☒ ballot question number (if known) ON or the ballot question regarding TABOR

TYPE OF REPORT AND FILING PERIOD (check one)

Type of report:

Due date:

Filing period:

- () 6-day pre-primary
() 42-day post-primary
☒ 6-day pre-general
() 42-day post-general

June 7, 2006
July 25, 2006
November 1, 2006
December 19, 2006

January 1, 2006 to June 1, 2006
June 2, 2006 to July 18, 2006
July 19, 2006 to October 26, 2006
October 27, 2006 to December 12, 2006

() Other (specify): _____

() Amendment to: _____

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Jul Dolphin
Person's/Authorized Official's signature
CGSEP Form 1056-B (Rev. 5/06)

10/16/06
Date

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ETHICS COMMISSION

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AARP MAINE STATE OFFICE

002

AARP
Name of PERSON

Page 2 of 4
(Schedule A only)

**SCHEDULE A
CASH CONTRIBUTIONS**

Include cash contributions only. Itemize contributions aggregating in excess of \$100 in this election from the same source.
Do not include in-kind contributions or loans on this schedule.

DATE RECEIVED	Contributor's name, mailing address, zip code (Contributions in excess of \$100)	Amount
	None	
1. Total cash contributions this page only		
Complete lines 2-4 on last page of Schedule A only:		
2. Total from attached Schedule A pages		
3. Aggregate of cash contributions of \$100 or less not itemized		
4. Total cash contributions this reporting period (Add lines 1, 2 & 3)		

